

AMENDED IN SENATE JUNE 6, 2005

AMENDED IN ASSEMBLY MAY 26, 2005

AMENDED IN ASSEMBLY APRIL 26, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 651**

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**Introduced by Assembly ~~Member Levine~~ Members *Levine and Berg***  
**(Coauthors: Assembly Members *Bass, Canciamilla, Chu, Dymally, Goldberg, Koretz, Laird, Leno, and Wolk*)**  
**(Coauthors: Senators *Kuehl, Lowenthal, and Romero*)**

February 17, 2005

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An act to ~~amend Section 14132.100 of, and to add Section 14132.27a to, the Welfare and Institutions Code, relating to Medi-Cal.~~ *add Chapter 3.95 (commencing with Section 7195) to Part 1 of Division 7 of the Health and Safety Code, relating to death.*

LEGISLATIVE COUNSEL'S DIGEST

AB 651, as amended, ~~Levine. Medi-Cal: disease management.~~  
*California Compassionate Choices Act.*

*Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.*

*This bill would enact the California Compassionate Choices Act, which would authorize an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for*

*medication for the purpose of ending his or her life in a humane and dignified manner. The bill would establish procedures for making these requests.*

*This bill would further provide that no provision in a contract, will, or other agreement, or in a health care service plan contract, policy of disability insurance, or health benefit plan contract, shall be valid to the extent it would affect whether a person may make or rescind a request for medication for the purpose of ending his or her life in a humane and dignified manner. The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, or the rate charged for any policy, from being conditioned upon or affected by the request. The bill would require that nothing in its provisions be construed to authorize ending a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute suicide or homicide.*

*This bill would provide immunity from civil or criminal liability or professional disciplinary action for participating in good faith compliance with the act. The bill would provide that no health care provider is under any duty to participate in providing to a qualified patient medication to end that patient's life and would authorize a general acute care hospital to prohibit a licensed physician from carrying out a patient's request under this act on the premises of the hospital if the hospital has notified the licensed physician of its policy regarding this act.*

*This bill would require the State Department of Health Services to adopt regulations regarding the collection of information to determine the use of and compliance with the act, and would require the department to annually review a sample of certain records and make a statistical report of the information collected.*

~~Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services and under which qualified low-income persons receive health care services.~~

~~Existing law requires the department to develop and apply for a waiver of federal law to test the efficacy of providing a disease management benefit to beneficiaries under the Medi-Cal program. Existing law requires this waiver, known as the Disease Management Waiver, to meet certain design requirements and specifies eligibility requirements. Existing law requires the department to evaluate the~~

effectiveness of the waiver and submit the evaluation to the Legislature on or before January 1, 2008.

~~This bill would require the department to conduct a Medi-Cal demonstration to test the efficacy of the chronic care model in providing a disease management benefit to Medi-Cal beneficiaries, for treating people with chronic diseases in community-based and public hospital system primary care settings and would authorize other demonstrations under the waiver that meet certain requirements. This bill would require the demonstration to be piloted on a county basis, with the consent of the participating counties. The bill would require submission of an evaluation of this waiver to the Legislature by January 1, 2009.~~

~~Existing law defines a visit for purposes of services provided by a federally qualified health center (FQHC) or a rural health clinic (RHC) under the Medi-Cal program.~~

~~This bill would define visit to also include a face-to-face encounter between a FQHC or RHC patient and a chronic disease management practitioner under the chronic care model demonstration provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 3.95 (commencing with Section 7195)  
2     is added to Part 1 of Division 7 of the Health and Safety Code, to  
3     read:

4  
5     CHAPTER 3.95. CALIFORNIA COMPASSIONATE CHOICES ACT

6  
7                     Article 1. General Provisions

8  
9     7195. (a) The Legislature believes that dying patients should  
10    have choices throughout the continuum of palliative care and  
11    that much must be done to improve access to hospice care and  
12    pain management. Hospice and effective palliative care  
13    successfully assist many thousands of terminally ill patients to  
14    die with dignity and without pain, and the Legislature hopes that  
15    all patients considering the procedures available under this  
16    chapter will properly consider other options, including hospice  
17    care and effective pain management. The Legislature finds that

1 *medical studies have shown that between 5 and 10 percent of*  
2 *dying patients experience severe pain and suffering that cannot*  
3 *be palliated by the best hospice or comfort care. The Legislature*  
4 *finds that in response to the Death with Dignity Act in the State*  
5 *of Oregon, that the referrals to hospice increased significantly.*  
6 *In addition, doctors significantly increased the use of morphine*  
7 *and other strong pain medications, thus improving the end-of-life*  
8 *care for more dying patients.*

9 *(b) (1) It is the intent of the Legislature that the personal and*  
10 *autonomous choice of dying patients regarding the time and*  
11 *manner of their death provided under this chapter be viewed as*  
12 *but one of several end-of-life options for dying patients.*

13 *(2) It is the intent of the Legislature that ~~the provisions of this~~*  
14 *chapter be strictly construed and not expanded in any manner.*  
15 *The restrictions and safeguards in the provisions of this chapter*  
16 *are based on the intent of the Legislature to balance the personal*  
17 *and autonomous choice of dying patients regarding the time and*  
18 *manner of their death and the Legislature's goal of providing*  
19 *safeguards to ensure that there are not instances of a coerced,*  
20 *unwanted, or early death by a vulnerable dying patient.*

21 *(3) The Legislature finds and declares that historically*  
22 *persons with disabilities have been subject to discrimination in*  
23 *the provision of medical care and have been treated by some as*  
24 *though their lives were less valuable or worthy of maintenance*  
25 *than those without disabilities. The Legislature finds that this*  
26 *discriminatory conduct is both illegal and reprehensible.*

27 *(4) It is the intent of the Legislature that a disability or age*  
28 *alone are not reason for a patient to be a qualified patient as*  
29 *defined in subdivision (l) of Section 7195.1. Any disabled*  
30 *individual or elderly person, and any physician who is the*  
31 *attending physician to these individuals, must strictly comply*  
32 *with all of the provisions of this chapter. Strict and rigorous*  
33 *attention must be evidenced in distinguishing chronic conditions,*  
34 *which are not eligible conditions under this chapter, and*  
35 *terminal illnesses, which are eligible, as described in this*  
36 *chapter.*

37 *7195.1. For purposes of this chapter the following definitions*  
38 *shall apply:*

39 *(a) "Adult" means an individual who is 18 years of age or*  
40 *older.*

1 (b) “Attending physician” means the physician who has  
2 primary responsibility for the care of the patient and for  
3 treatment of the patient’s terminal disease.

4 (c) “Capable” means that in the opinion of the patient’s  
5 attending physician or consulting physician, a patient has the  
6 ability to make and communicate health care decisions to health  
7 care providers, including communication through persons  
8 familiar with the patient’s manner of communicating if those  
9 persons are available. Incapable means that the patient does not  
10 have the mental capacity to make and understand decisions  
11 about his or her medical care.

12 (d) “Consulting physician” means a physician, other than the  
13 attending physician, who is qualified by specialty or experience  
14 to make a professional diagnosis and prognosis regarding the  
15 patient’s disease.

16 (e) “Counseling” means a consultation between a state  
17 licensed psychiatrist or psychologist and a patient for the  
18 purpose of determining whether the patient is suffering from a  
19 psychiatric or psychological disorder, or depression causing  
20 impaired judgment.

21 (f) “Health care provider” means a person licensed, certified,  
22 or otherwise authorized or permitted by the law of this state to  
23 administer health care in the ordinary course of business or  
24 practice of a profession, and includes a licensed health care  
25 facility.

26 (g) “Health care facility” means any health facility described  
27 in Section 1250.

28 (h) “Informed decision” means a decision, made by a  
29 qualified patient, to request and obtain a prescription to end his  
30 or her life in a humane and dignified manner, that is not based  
31 on coercion by the patient’s next of kin or any other third parties,  
32 is based on an appreciation of the relevant facts, and is made  
33 after being fully informed by the attending physician of all of the  
34 following:

35 (1) His or her medical diagnosis.

36 (2) His or her prognosis.

37 (3) The potential risk associated with taking the medication to  
38 be prescribed.

39 (4) The probable result of taking the medication to be  
40 prescribed.

1     (5) *The feasible alternatives, as provided in paragraph (5) of*  
2 *subdivision (b) of Section 7196, including, but not limited to,*  
3 *comfort care, hospice care, and pain control.*

4     (i) *“Medically confirmed” means the medical opinion of the*  
5 *attending physician has been confirmed by a consulting*  
6 *physician who has examined the patient and the patient’s*  
7 *relevant medical records.*

8     (j) *“Patient” means a person who is under the care of a*  
9 *physician.*

10    (k) *“Physician” means a doctor of medicine or osteopathy*  
11 *licensed to practice medicine by the Medical Board of*  
12 *California.*

13    (l) *“Qualified patient” means a capable adult who is a*  
14 *resident of California and has satisfied the requirements of this*  
15 *chapter in order to obtain a prescription for medication to end*  
16 *his or her life in a humane and dignified manner.*

17    (m) *“Resident” means a person who has lived in a principal*  
18 *place of residence in the State of California for six months or*  
19 *more.*

20    (n) *“Terminal disease” means an incurable and irreversible*  
21 *disease that has been medically confirmed and will, within*  
22 *reasonable medical judgment, produce death within six months.*

23    7195.3. *An adult who is capable, is a resident of California,*  
24 *has been determined by the attending physician and a consulting*  
25 *physician to be suffering from a terminal disease, and who has*  
26 *voluntarily expressed his or her wish to obtain life-ending*  
27 *medication to his or her attending physician shall, in addition to*  
28 *the other requirements of this chapter, make a written request for*  
29 *medication for the purpose of ending his or her life in a humane*  
30 *and dignified manner in accordance with this chapter in order to*  
31 *be eligible for qualification under this chapter.*

32    7195.5. (a) *A valid written request for medication under this*  
33 *chapter shall be in substantially the form prescribed by Section*  
34 *7199, signed and dated by the patient and witnessed by at least*  
35 *two individuals who, in the presence of the patient, attest that to*  
36 *the best of their knowledge and belief the patient is capable,*  
37 *acting voluntarily, and is not being coerced to sign the request.*

38    (b) *One of the witnesses shall be a person who is not any of*  
39 *the following:*

40    (1) *A relative of the patient by blood, marriage, or adoption.*

1     (2) A person who at the time the request is signed would be  
2     entitled to any portion of the estate of the qualified patient upon  
3     death under any will or by operation of law.

4     (3) An owner, operator, or employee of a health care facility  
5     where the qualified patient is receiving medical treatment or is a  
6     resident.

7     (c) The patient's attending physician at the time the request is  
8     signed shall not be a witness.

9  
10                     Article 2. Safeguards  
11

12     7196. Upon being voluntarily informed by a qualified patient  
13     that the patient wishes to receive medication for the purpose of  
14     ending his or her life in a humane and dignified manner in  
15     accordance with this chapter, the attending physician shall do all  
16     of the following:

17     (a) Make the initial determination of whether a patient has a  
18     terminal disease, is capable, and has made the request  
19     voluntarily.

20     (b) Inform the patient of all of the following:

21         (1) His or her medical diagnosis.

22         (2) His or her prognosis.

23         (3) The potential risks associated with taking the medication  
24         to be prescribed.

25         (4) The probable result of taking the medication to be  
26         prescribed.

27         (5) The feasible alternatives, including, but not limited to,  
28         comfort care, hospice care, and pain control. This disclosure  
29         must be provided in writing to the patient, and shall include, but  
30         not be limited to, contact information about locally based  
31         providers of comfort and hospice care.

32     (c) Refer the patient to a consulting physician for medical  
33     confirmation of the diagnosis, and for a determination that the  
34     patient is capable and acting voluntarily.

35     (d) Refer the patient for counseling if appropriate pursuant to  
36     Section 7196.2.

37     (e) Request that the patient notify next of kin.

38     (f) Inform the patient that he or she has an opportunity to  
39     rescind the request at any time and in any manner, and offer the

1 *patient an opportunity to rescind at the end of the 15-day waiting*  
2 *period described in Section 7196.5.*

3 *(g) Verify, immediately prior to writing the prescription for*  
4 *medication under this chapter, that the patient is making an*  
5 *informed decision.*

6 *(h) Fulfill the medical record documentation requirements of*  
7 *Section 7196.8.*

8 *(i) Ensure that all appropriate steps are carried out in*  
9 *accordance with this chapter prior to writing a prescription for*  
10 *medication to enable a qualified patient to end his or her life in a*  
11 *humane and dignified manner.*

12 *7196.1. Before a patient is qualified under this chapter, a*  
13 *consulting physician shall examine the patient and his or her*  
14 *relevant medical records and shall, in writing, confirm, the*  
15 *attending physician's diagnosis and that the patient is suffering*  
16 *from a terminal disease and verify that the patient is capable, is*  
17 *acting voluntarily, and has made an informed decision.*

18 *7196.2. If, in the opinion of the attending physician or the*  
19 *consulting physician, a patient may be suffering from a*  
20 *psychiatric or psychological disorder that impairs judgment or*  
21 *from depression or medication that impairs judgment, the*  
22 *attending physician or consulting physician shall require the*  
23 *patient to undergo counseling as specified in subdivision (e) of*  
24 *Section 7195.1. In this case, no medication to end the patient's*  
25 *life in a humane and dignified manner shall be prescribed unless*  
26 *the patient first undergoes the requisite counseling and until the*  
27 *person performing the counseling determines that the patient is*  
28 *not suffering from a psychiatric or psychological disorder that*  
29 *impairs judgment, or from impaired judgment caused by*  
30 *depression or medication.*

31 *7196.3. No person shall receive a prescription for medication*  
32 *to end his or her life in a humane and dignified manner unless he*  
33 *or she has made an informed decision as defined in subdivision*  
34 *(h) of Section 7195. Immediately prior to writing a prescription*  
35 *for medication in accordance with this chapter, the attending*  
36 *physician shall verify that the patient is making an informed*  
37 *decision.*

38 *7196.4. The attending physician shall ask the patient to notify*  
39 *the patient's next of kin of his or her request for medication*  
40 *pursuant to this chapter. A patient who declines or is unable to*

1 *notify next of kin shall not have his or her request denied for that*  
2 *reason.*

3 *7196.5. In order to receive a prescription for medication to*  
4 *end his or her life in a humane and dignified manner, a qualified*  
5 *patient shall have made an oral request and a written request,*  
6 *and reiterate the oral request to his or her attending physician no*  
7 *less than 15 days after making the initial oral request. At the time*  
8 *the qualified patient makes his or her second oral request, the*  
9 *attending physician shall offer the patient an opportunity to*  
10 *rescind the request.*

11 *7196.6. A patient may rescind his or her request at any time*  
12 *and in any manner without regard to his or her mental state. No*  
13 *prescription for medication under this chapter may be written*  
14 *without the attending physician offering the qualified patient an*  
15 *opportunity to rescind the request.*

16 *7196.7. No less than 15 days shall elapse between the*  
17 *patient's initial oral request and the writing of a prescription*  
18 *under this chapter. No less than 48 hours shall elapse between*  
19 *the patient's written request and the writing of a prescription*  
20 *under this chapter.*

21 *7196.8. The following shall be documented or filed in the*  
22 *patient's medical record:*

23 *(a) All oral requests by a patient for medication to end his or*  
24 *her life in a humane and dignified manner.*

25 *(b) All written requests by a patient for medication to end his*  
26 *or her life in a humane and dignified manner.*

27 *(c) The attending physician's diagnosis and prognosis, and his*  
28 *or her determination that the patient is capable, acting*  
29 *voluntarily, and has made an informed decision.*

30 *(d) The consulting physician's diagnosis and prognosis, and*  
31 *his or her verification that the patient is capable, acting*  
32 *voluntarily, and has made an informed decision.*

33 *(e) A report of the outcome and determinations made during*  
34 *counseling, if performed.*

35 *(f) The attending physician's offer to the patient to rescind his*  
36 *or her request at the time of the patient's second oral request*  
37 *pursuant to Section 7196.5.*

38 *(g) The attending physician's discussion with the patient of*  
39 *feasible alternatives, including, but not limited to, hospice care,*  
40 *comfort care, and pain control.*

1     (h) A note by the attending physician indicating that all the  
2     requirements of this chapter have been met and indicating the  
3     steps taken to carry out the request, including a notation of the  
4     medication prescribed.

5     7196.9. Only requests made by California residents under  
6     this chapter shall be granted.

7     7197.1. (a) The department shall adopt regulations  
8     regarding requirements for the collection of information to  
9     determine the use of and compliance with this chapter. The  
10    information collected shall not be a public record and shall not  
11    be made available for inspection by the public.

12    (b) The department shall generate and make available to the  
13    public an annual statistical report of information collected  
14    pursuant to subdivision (a).

15    (c) The department shall annually review a sample of records  
16    maintained pursuant to this chapter.

17    7197.3. (a) No provision in a contract, will, or other  
18    agreement, whether written or oral, to the extent the provision  
19    would affect whether a person may make or rescind a request for  
20    medication to end his or her life in a humane and dignified  
21    manner, shall be valid.

22    (b) No obligation owing under any contract in existence on or  
23    before January 1, 2006, shall be conditioned or affected by the  
24    making or rescinding of a request by a person for medication to  
25    end his or her life in a humane and dignified manner.

26    (c) No health care service plan contract, as defined in  
27    subdivision (r) of Section 1345, shall be conditioned upon or  
28    affected by the making or rescinding of a request by a person for  
29    medication to end his or her life in a humane and dignified  
30    manner. Any such contract provision shall be invalid.

31    (d) No provision of a policy of disability insurance or a health  
32    benefit plan contract that provides coverage for hospital,  
33    medical, or surgical expenses pursuant to Part 2 (commencing  
34    with Section 10110) of Division 2 of the Insurance Code shall be  
35    conditioned upon or affected by the making or rescinding of a  
36    request by a person to end his or her life in a humane and  
37    dignified manner. Any such policy provision shall be invalid.

38    7197.5. The sale, procurement, or issuance of any life, health,  
39    or accident insurance or annuity policy or the rate charged for  
40    any policy shall not be conditioned upon or affected by the

1 *making or rescinding of a request by a person for medication to*  
2 *end his or her life in a humane and dignified manner. A qualified*  
3 *patient's act of ingesting medication to end his or her life in a*  
4 *humane and dignified manner in accordance with this chapter*  
5 *shall not have an effect upon a life, health, or accident insurance*  
6 *or annuity policy.*

7 *7197.7. Nothing in this chapter shall be construed to*  
8 *authorize a physician or any other person to end a patient's life*  
9 *by lethal injection, mercy killing, or active euthanasia. The*  
10 *patient must self-administer the medication provided under this*  
11 *chapter. Actions taken in accordance with this chapter shall not,*  
12 *for any purpose, constitute suicide, assisted suicide, mercy*  
13 *killing, or homicide, under the law.*

14  
15 *Article 3. Immunities and Liabilities*  
16

17 *7198. Except as provided in Section 7198.5:*

18 *(a) Notwithstanding any other provision of law, no person*  
19 *shall be subject to civil or criminal liability or professional*  
20 *disciplinary action for participating in good faith compliance*  
21 *with this chapter. This includes being present when a qualified*  
22 *patient takes the prescribed medication to end his or her life in a*  
23 *humane and dignified manner.*

24 *(b) No professional organization or association, or health care*  
25 *provider, may subject a person to censure, discipline,*  
26 *suspension, loss of license, loss of privileges, loss of membership,*  
27 *or other penalty for participating or refusing to participate in*  
28 *good faith compliance with this chapter.*

29 *(c) No request by a patient for or provision by an attending*  
30 *physician of medication in good faith compliance with this*  
31 *chapter shall constitute neglect for any purpose of law or provide*  
32 *the sole basis for the appointment of a guardian or conservator.*

33 *(d) No health care provider shall be under any duty, whether*  
34 *by contract, by statute, or by any other legal requirement to*  
35 *participate in the provision to a qualified patient of medication to*  
36 *end his or her life in a humane and dignified manner. If a health*  
37 *care provider is unable or unwilling to carry out a patient's*  
38 *request under this chapter, and the patient transfers his or her*  
39 *care to a new health care provider, the prior health care*

1 provider shall transfer, upon request, a copy of the patient's  
2 relevant medical records to the new health care provider.

3 (e) Notwithstanding any other provision of law, a general  
4 acute care hospital, as defined in subdivision (a) of Section 1250,  
5 may prohibit a licensed physician from carrying out a patient's  
6 request under this chapter on the premises of the hospital if the  
7 hospital has notified the licensed physician of its policy  
8 regarding this chapter.

9 7198.5. (a) Nothing in this chapter limits civil or criminal  
10 liability resulting from other negligent conduct or intentional  
11 misconduct by any person.

12 (b) The penalties in this chapter do not preclude criminal  
13 penalties applicable under other law for conduct that is  
14 inconsistent with this chapter.

15  
16 *Article 4. Severability*  
17

18 7198.9. Any section of this chapter that is held invalid as to  
19 any person or circumstance shall not affect the application of  
20 any other section of this chapter that can be given full effect  
21 without the invalid section or portion thereof.

22  
23 *Article 5. Form of the Request*  
24

25 7199. A request for a medication as authorized by this  
26 chapter shall be in substantially the following form:

27  
28  
29 *REQUEST FOR MEDICATION*  
30 *TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER*

1 I, \_\_\_\_\_, am an adult of sound mind.

2 I am suffering from \_\_\_\_\_, which my attending physician has  
3 determined is a terminal disease which will, within reasonable medical  
4 judgment, likely lead to my death within six months, and which has been  
5 medically confirmed by a consulting physician.

6 I have been fully informed of my diagnosis, prognosis, the nature  
7 of the medication to be prescribed, and the potential associated risks, the  
8 expected result, and the feasible alternatives, including comfort care,  
9 hospice care, and pain control.

10 I request that my attending physician prescribe medication that  
11 will allow me to hasten the end of my life in a humane and dignified manner.

12  
13 *INITIAL ONE:*

14 \_\_\_\_\_ I have informed my family of my decision and taken their  
15 opinions into consideration.

16 \_\_\_\_\_ I have decided not to inform my family of my decision.

17 \_\_\_\_\_ I have no family to inform of my decision.

18 I understand that I have the right to rescind this request at any time.

19 I understand the full import of this request, and I expect to die when I  
20 take the medication to be prescribed.

21 I make this request voluntarily and without reservation, and I accept  
22 full moral responsibility for my actions.

23 Signed: \_\_\_\_\_

24 Dated: \_\_\_\_\_

25  
26 *DECLARATION OF WITNESSES*

27 We declare that the person signing this request:

28 (a) Is personally known to us or has provided proof of identity;

29 (b) Signed this request in our presence;

30 (c) Appears to be of sound mind and not under duress, fraud, or undue  
31 influence;

32 (d) Is not a patient for whom either of us is the attending physician.

33 \_\_\_\_\_ Witness 1/Date

34 \_\_\_\_\_ Witness 2/Date

*NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident.*

~~SECTION 1. Section 14132.27a is added to the Welfare and Institutions Code, to read:~~

**All matter omitted in this version of the bill appears in the bill as amended in the Assembly May 26, 2005. (JR11)**

CORRECTIONS:

Text- Page 4.